IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 153 OF 2004

Shri Shirish Madhukar Dalvi. ... Appellant.

V/s.

Assistant Commissioner of
Income-tax and others. ... Respondents.

Arun P. Sathe for the appellant.

Ashok Kotangale for the respondents.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 13th July 2006.

JUDGMENT : (Per V.C.Daga, J.)

. This appeal is directed against the order of the Income Tax Appellate Tribunal, Bench-I, Mumbai ("Tribunal" for short) dated 28th July, 2003.

The Facts :
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2. The facts of the case are that the appellant is dealing in landed properties. He is regularly assessed to income-tax. Action under section 132 of the Income Tax Act, 1961 ("Act" for short) for search and seizure was conducted at the residential and business premises of the appellant between 11th June, 1998 and concluded on 15th July, 1998.

3. The assessing officer issued notice dated 6th July, 1998 calling upon the appellant to file return for the block period. However, appellant disputes the receipt of the said letter/notice. The appellant admits to have received a letter dated 17th September, 1998 from the assessing officer reminding him to file a return for the block period 1987-88 to 1997-98 which referred to the earlier notice dated 6th July, 1998 though incorrectly and stated that the appellant did not file return for the block period in response to the said notice dated 6th July, 1998.

4. The appellant by his letter dated 28th September, 1998 denied receipt of the notice dated 6th July, 1998, however, sought extension of time and, ultimately, filed his return for the block period i.e. assessment year 1989-90 to 1999-2000 on 2nd November, 1998.

5. The assessing officer assessed return for the said block on 30th June, 2000 and passed an order under section 158-BC read with section 143(3) of the Act.

6. The appellant preferred an appeal before the Commissioner of Income Tax (Appeals) challenging the validity of the said assessment order contending that the order was passed by the assessing officer without serving proper notice under section 158-BC(a), as such assessment is illegal and without jurisdiction.

7. The Commissioner (Appeals) decided appeal against the appellant by his order dated 28th July, 2000.

8. Being aggrieved by the aforesaid order of the Commissioner (Appeals), appellant preferred second appeal before the Income Tax Appellate Tribunal ("Tribunal" for short) raising the questions mentioned hereinabove.

9. The Tribunal by its order dated 28th July, 2003 deleted certain additions and remitted matter back to the assessing officer for verification of expenditure allowable under section 37. The Tribunal, however, confirmed addition of Rs.3,85,196/-. The Tribunal relying upon the decision of the Supreme Court in **C.I.T. v. Jai**

Prakash Singh, 219 ITR 737 (SC) upheld the jurisdiction of the assessing officer and held the notice dated 6th July, 1998 as valid in law being under the umbrella of section 292B of the Act and held that the said notice was factually served on the noticee- appellant.

10. Being aggrieved by the aforesaid order of the Tribunal dated 28th July, 2003, the appellate jurisdiction of this Court under section 260A of the Act is invoked by the appellant to raise the following questions said to be questions of law:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in treating the letter dated 6th July, 1998 as Notice u/s 158-BC of the Act?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that provisions of section 292-B of the Income Tax Act were applicable to the present case?

3. Whether on the facts and in the circumstance of the case the Tribunal was right in law in not allowing deduction u/s 37 of Rs.3,85,196/- just because the vouchers of the said expenditure were undated and despite the incontrovertible fact that the said expenditure related to the transactions undertaken and concluded earlier?

Submissions :
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11. Mr.Sathe, learned counsel for the appellant submits that the notice dated 6th July, 1998 was never served on the appellant apart from the fact that the same was suffering from enormous infirmities and defects. Mr.Sathe went on to submit that the notice dated 6th July, 1998 was not issued under correct provisions of the Act. That the block period mentioned therein was erroneous. That it did not provide 15 days clear notice. That it was issued much before the conclusion of search which, according to him, lasted till 15th July, 1998 since last panchanama was drawn on that date. That the notice was not in the prescribed format of ITNS-274. That it was never served on the appellant.

12. In the submission of Mr.Sathe, all the above infirmities/ defects in the notice dated 6th July, 1998 go to the root of the jurisdiction of the assessing officer to initiate proceedings for bloc assessment much less to assess the total income including undisclosed income for the block period under section 158-BC. According to him, service of legal and valid notice under section 158-BC(a) is a condition precedent for assumption of jurisdiction to

assess the return for block period. He submits that the issue and service of notice under section 158-BC(a) is not a procedural requirement; the compliance of the mandatory provision of section 158-BC cannot be by-passed or waived.

13. Mr.Sathe placed reliance on the judgment of this Court in the case of **Commissioner of Agricultural Income Tax v. Ramkumar & others**, 141 ITR 85, to contend that defect in the alleged notice is not a procedural defect but a failure to comply with condition precedent to assumption of jurisdiction must result in vitiating the assessment proceedings.

14. Mr.Sathe placed reliance on the judgment of the Apex Court in the case of **C.I.T. v. Kurban Hussain Ibrahimji Mithiborwala**, 82 ITR 821 to contend that the Income Tax Officer's jurisdiction to reopen an assessment under section 34 of the Act has been held to be depending upon the issuance of a valid notice. If the notice issued itself is invalid, then the entire proceedings taken pursuant thereto would become void for want of jurisdiction. Mr.Sathe, borrowing assistance from this judgment, submits that entire impugned proceedings have become void for want

of jurisdiction. He placed reliance on number of other judgments reference of which in detail, in our opinion, at this stage is not necessary since we propose to deal with the relevant citations at the later stage of this judgment while dealing with the rival contentions.

15. Mr.Sathe further submits that by no stretch of imagination the conduct of the appellant would lead to an inference that appellant has either acquiesced or waived the objection with respect to jurisdiction and submitted to the jurisdiction by filing his return for the block period in question. In his submission, question of jurisdiction goes to the root of the matter and the assessee not raising the same at the assessment stage does not confer jurisdiction of the assessing officer. In his submission, inherent lack of jurisdiction can be challenged at any point of time or at any stage in any proceeding. In support of his submission, he placed reliance on the judgment of this Court in the case of **Inventors Industrial Corpn. Ltd. v. C.I.T.**, 194 ITR 548.

16. Mr.Sathe would urge that the provision of section 158-BC is synonymous and *pari materia* with

that of section 148 of the Act. He, thus, submits that the validity of the notice issued under section 158-BC(a) must be tested with the same rigour with which the validity of notice under section 148(a) is required to be examined. Based on this foundation, Mr.Sathe submits that the very basis to assume valid jurisdiction to assess total income including undisclosed income for the block period is: A valid search conducted under section 132 of the Act; finding of undisclosed income on the basis of material seized during the conduct of such search; and issuance coupled with service of a valid notice under section 158-BC(a).

17. Mr.Sathe submits that the notice under section 158-BC(a) is to be issued for the block period which is maximum of 10 assessment years preceding the assessment year in which a search is conducted. The block period contemplated under section 158-B is not necessarily all the 10 assessment years preceding the assessment year in which search is conducted, as undisclosed income for the block period is to be assessed is in context of the material found during the search. He, thus, submits that the alleged notice dated 6th July, 1998 which directed the appellant to file return for the

block period 1987-88 to 1997-98 had assumed jurisdiction for assessing the income under section 158-BC beyond the years as mandated by definition of block period under section 158-B.

18. Mr.Sathe, while developing another shed of his submission leading to the shelter of section 292-B of the Act taken by the respondents, urged that the glaring defects and/or infirmities in the notice going to the root of the jurisdiction of the authority can not be cured by resorting to the provision of section 292-B. The refuge of section 292-B cannot be allowed to be taken in all cases to get over the vital defects in the notice. If the defects are merely technical in nature, then such defects can be cured by the provision of section 292B of the Act. In support of his submission he pressed into service statement of objects and reasons leading to introduction of section 292B of the Act.

19. Mr.Sathe, turning to the facts of the present case at hand would urge that the notice issued to the appellant was not in conformity with the provisions of the Act. The same was contrary to the provision of section 158-BC as such the said notice cannot be made valid by providing material

under section 292B of the Act. In his submission, the defects pointed out by him are not merely technical in nature but they are vital and substantial, as such the said defects which existed could not be treated as cured by resorting to section 292-B. In support of his submission he relied upon the judgment of this Court in the case of **Comm. of Agricultural Income Tax v. Ramkumar & ors.** (supra) and the judgments of the other High Courts, viz.; **P.N.Shashikumar & Ors. v. C.I.T.** (Ker.), 170 ITR 80; **Continental Commercial Corpn. v. I.T.O.**, 100 ITR 170 (Mad.); **Sunrolling Mills Pvt.Ltd. v. I.T.O.**, 160 ITR 412 (Cal.).

20. Mr.Sathe further submits that the reliance placed by the Tribunal on the judgment of the Apex Court in the case of **C.I.T. v. Jai Prakash Singh**, (supra) is misplaced. On facts, he tried to distinguish the said judgment.

21. Mr.Sathe, turning to the third question with regard to the disallowance of Rs.3,85,196/-, has urged that the vouchers of expenditure incurred were in respect of payments made to the land owners from whom the lands were purchased by the appellant. The transaction in question was concluded in the

assessment year 1999-2000. In his submission, merely because the vouchers were undated the expenditure could not have been assessed in the assessment year 1999-2000 holding that the search was conducted in the previous year corresponding to the assessment year 1999-2000. According to him, under the concept of block assessment under provision of section 158-BB(1) the total income including undisclosed income is to be computed for each of the previous years falling within the block period. That the expenditure of Rs.3,85,196/- ought to have been considered for the previous year in which the transactions leading to purchase of lands were entered into, i.e. assessment year 1993-94 and not assessment year 1999-2000. Mr.Sathe, thus, submits that considering his submission, the impugned order is liable to be set aside and the appeal deserves to be allowed.

22. **Per contra**, Mr.Kotangale, learned counsel appearing for the Revenue while replying to the submissions with respect to the validity of notice issued under section 158-BC(a) and protection of section 292-B, submits that nowhere in the Act it is made mandatory to issue notice in the prescribed format. The subject notice dated 6th July, 1998 can

very well be said to be a valid notice because the said notice bears signature of the issuing authority, having stamp and seal of the officer concerned and the appellant was merely put on notice requiring him to comply with his legal obligation. He further submits that merely because a notice purports to make reference to a wrong provision of law that by itself would not make notice invalid which is otherwise within the four corners of law. That mere reciting wrong source of power does not affect validity of the notice. In his submission, the subject notice dated 6th July, 1998, substantially complies with the provision of section 158-BC of the Act.

23. Mr.Kotangale further submits that in order to make the notice legal refuge of section 292B can very well be taken by the Revenue to get over the technical defects, if any. Alternatively, he submits that subsequent to notice dated 6th July, 1998 one more notice dated 17th September, 1998 was issued to the appellant- assessee which has strictly complied with the requirement of section 158-BC(a), the receipt of which by the appellant is not in dispute. In his submission, at any rate, the subsequent notice dated 17th September, 1998 being a valid notice, received by the assessee, the alleged illegality of

notice dated 6th July, 1998, if any, stands cured and the order of assessment cannot be said to be bad and illegal.

24. Mr.Kotangale reiterates that the appellant in the appeal memo or in the written statement did not attack illegality of the notice dated 17th September, 1998, in his submission, rightly, because the said subsequent notice complies with all the requirement of section 158-BC. Mr.Kotangale, thus, submits that it is not necessary to dwell upon the legality or validity of the notice dated 6th July, 1998 in view of the subsequent valid and legal notice issued by the department on which the appellant has acted upon and filed his return without raising any objection thereto.

25. Mr.Kotangale further submits that the notice dated 17th September, 1998 has been acknowledged by the assessee vide his letter dated 29th September, 1998; wherein he did not dispute legality of the said notice. On the top of it, the appellant admitted necessary return for the bock period consisting assessment years 1989-90 to 1998-99 plus period from 1st April, 1998 to 11th June, 1998. The appellant also prayed for time to file return

beyond 45 days and requested not to initiate penal proceedings in filing return for the block period. In view of this, Mr.Kotangale submits that the submissions made by the learned counsel for the appellant hold no water.

26. So far as third issue relating to deduction under section 37 of the Act in the sum of Rs.3,85,196/- is concerned, Mr.Kotangale submits that the question relating to this aspect of the matter can hardly be said to be a substantial question of law. In his submission, the Tribunal has confirmed the addition made by the assessing officer to the extent of Rs.3,85,196/- as the appellant could not establish particular expenditure as business expenditure by producing cogent evidence. He further submits that unless it is proved that expenditure in question was incurred for earning income which has been brought to tax, no deduction under section 37(1) could have been allowed. In support of his submission, he relied upon the judgment of the Madras High Court in the case of **C.I.T. v. Bhagwati Developers**, 261 ITR 658 and judgment of Delhi High Court in the case of **R.Kanaklal v. C.I.T.**, 244 ITR 152. He, thus, prayed for dismissal of the appeal holding it to be without any substance.

Statutory Provisions :
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27. Before proceeding to consider the rival contentions revolving around the questions raised, it is necessary to turn to the statutory provisions having direct impact on the questions raised.

148. Issue of notice where income has escaped assessment.

(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the pervious year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.

(2) ....

158-BA. Assessment of undisclosed income as a result of search.

(1) Notwithstanding anything contained in any other provisions of this Act, where after the 30th day of June, 1995 a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of any person, then, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter.

(2) The total undisclosed income relating to the block period shall be charged to tax, at the rate specified in section 113, as income of the block period irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not.

Explanation.- For the removal of doubts, it is hereby declared that-

(a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period.

(b) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period;

(c) the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period.

(3) Where the assessee proves to the satisfaction of the Assessing Officer that any part of income referred to in sub-section (1) relates to an assessment year for which the previous year has not ended or the date of filing the return of income under sub-section (1) of section 139 for any previous year has not expired, and such income or the transactions relating to such income are recorded on or before the date of the search or requisition in the books of account or other documents maintained in the normal course relating to such previous years, the said income shall not be included in the block period.

158-BC. Procedure for block assessment. Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned

under section 132A, in the case of any person, then,-

(a) the Assessing Officer shall-

(i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days;

(ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,

as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period:

Provided that no notice under section 148 is required to be issued for the purpose of proceeding under this Chapter:

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return.

(b) ....

(c) ....

(d) ....

292B. Return of income, etc., not to be invalid on certain ground.- No return of income, assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Legislative History :
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28. The Finance Act, 1995 inserted a new Chapter XIV-B in the Act. The Finance (No.2) Act 1996 has made some changes with retrospective effect from 1st July, 1995. The Chapter provides a new concept for assessment in cases relating to searches conducted under section 132 of the Act or requisitions made under section 132A of the Act after 30 June, 1995.

29. This chapter required an assessing officer to assess the undisclosed income of a block period, of a person being searched, in accordance with the provisions of this chapter. The block period was defined to mean a period of six assessment years

preceding the previous year of search and included the period up to the date of search.

30. An undisclosed income was also specifically defined. Such income determined in accordance with the provisions of the chapter and other provisions of the Act was charged to tax at the rate of 60% or such other rate as specified under section 113 of the Act. Surcharge as applicable in the year of search was also levied.

31. This special assessment was independent of the regular assessment for the relevant years included in the block period. Generally, the disclosed income of a person was taxed in regular assessment and undisclosed income found in the course of search was taxed in block assessment in case of a person who was searched. A detailed procedure was laid down for computation as also for assessment of undisclosed income. Time limit also was provided for completion of the block assessments land the authority competent to make such assessment was also defined. Special provisions were made for assessment of third party's undisclosed income.

32. No interest under sections 234A, 234B and 234C was levied in respect of undisclosed income. similarly, no penalty for concealment of income as also for non-maintenance of accounts and audit thereof was leviable in respect of unaccounted transactions and undisclosed income.

33. The block assessment was subjected to appeal under section 246A and could be rectified and or revised. It was possible to file a petition before the Settlement Commission against the block assessment for the settlement of case.

34. Separate provisions for levy of interest for delay in filing the return for block period were provided. Provisions were also made for levy of penalty on the amount of difference between the returned undisclosed income and the assessed undisclosed income.

35. All the provisions of the Act other than those provided were made applicable to the assessment under this Chapter XIV-B of the Act.

Ruling Authorities :
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36. Before we deal with the aforesaid contentions raised on behalf of the rival parties in the light of the above extracted statutory provisions, it is appropriate to first consider the law laid down by the Apex Court with various other High Courts relevant to the facts of the case at hand.

37. In the case of **State of Kerala vs. Muniyalla**, AIR 1985 SC 470, it is held that merely because an order is purported to be made under a wrong provision of law, it does not become invalid so long as there is some other provision of law

38. In the case of **Hukumchand Mills Ltd. vs. State of Madhya Pradesh**, AIR 1964 SC 1329, the Apex Court has ruled that mere mistake in the opening part of the notification in reciting the wrong source of power does not affect the validity of the amendments made.

39. In the case of **State Bank of Patiala vs. S.K.Sharma**, (1996) 3 SCC 364, the Apex Court ruled that in case of a procedural provision which is not

of a mandatory character, the complaint of violation has to be examined from the stand-point of substantial compliance. The order passed in violation of such provision can be set aside only where such violation has occasioned prejudice to the subject. It further went on to observe that even mandatory requirement can be waived by the person concerned, if such mandatory provision of law is conceived in his interest and not in the public interest. The conduct of the subject must be borne in mind while examining a complaint of non-observance of procedural rules governing such enquiries. As a rule, all such procedural rules are designed to afford a full and proper opportunity to the subject to defend himself.

40. In the case of **Dove Investments (P) Ltd vs Gujarat Industrial Investment Corporation**, (2006) 2 SCC 619; the Apex Court has observed that regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the Court to try to get the real

intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration.

41. In the case of **P.T. Rajan vs. T.P.M. Sahuj**, (2003) 8 SCC 498, the Apex Court has said that whether a statute would be directory or mandatory will depend upon the scheme thereof. Ordinarily, a procedural provision would not be mandatory even if the word "shall" is employed therein unless a prejudice is caused.

42. In **Chandrakant Uttam Chodankar v. Dayanand Rayu Mandrakar** (2005) 2 SCC 188, the Apex Court has observed as under:

> "74. In this case, it is not necessary for us to go into the question as to whether section 83 is imperative in character or not inasmuch as it is settled law that even where the expression 'shall' is used, the same may not be held to be mandatory. Even a mandatory provision having regard to the text and context of the statute may not call for strict construction.
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> 75. In *U.P.SEB v. Shiv Mohan Singh* (2004) 8 SCC 402, this Court stated the law in the following terms: (SCC p.440, paras 96-97)
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> > "96. Ordinarily, although word 'shall' is considered to be imperative in nature but it has to be interpreted as directory if the

context or the intention otherwise demands. (See Sainik Motors v. State of Rajastan, AIR 1961 SC 1480, para 12)

97. It is important to that in Crawford on Statutory Construction at p.539, it is stated:

"271. *Miscellaneous implied exceptions from the requirements of mandatory statutes, in general*- Even where statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their jurisdiction in considerations of justice. It is a well-known fact that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient calibre to execute or justify a technical violation of the law."'"

43. In the case of **Balchand v. I.T.O., Sagar**, (1969) 72 ITR 197, the Apex Court ruled that merely because defect in service of notice, the assessment order does not become invalid. Similarly, the Apex Court in the case of **Jai Prakash Singh** (supra) went on to hold that non-service of notice under section 147(1) of the Income Tax Act,1961 to 9 out of 10 representatives of the deceased did not validate

order of the Assessing Officer relating to the assessment year in question.

44. In in the case of **P.N.Sasikumar** (supra), the Kerala High Court has ruled that issue of notice under section 148 of the I.T. Act is a condition precedent to the validity of any assessment order passed under section 147 of the Act. It further ruled that absence of notice and service of defective notice stand on different footing. In absence of service of notice authority does not get jurisdiction whereas in case of a defective notice, authority would be entitled to exercise jurisdiction provided, there are no substantial defects causing substantial prejudice to the noticee. This principle has been settled in several reported judgments. After amendment to section 292B came into force on 1st October, 1975 no notice shall be deemed to be invalid merely because of any omission to serve or any defect in the service of notice does not as erase liability to pay tax.

45. In the case of Dove Investments (P) Ltd. (supra), the Apex Court has held that it is necessary for the person to show how he was prejudiced. It is, therefore, necessary for the person objecting to the

validity of notice to demonstrate prejudice suffered by it. The same principle is reiterated in the case of **State Bank of Patiala** (Supra).

Application of law to the case at hand:
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46. Having examined factual matrix, statutory provision, law laid down by various Courts presently holding the field, if one turns to the facts of the case at hand, it is not in dispute that notice dated 6th July, 1998 did not mention correct provisions of the Act; it did not mention correct block period for which the return was required to be filed; it did not give 15 days clear notice. Though the said notice was defective, it did not cause any prejudice to the appellant. Undisputed factual matrix reveals that appellant was served with another notice dated 17th September 1998 mentioning block period for which the return was required to be filed incorporating correct reference to the sections applicable to the case in question and it mentioned that the period of 45 days for filing return was available to the appellant which the appellant did not avail. He was directed to file return.

47. Pursuant to the above notice dated 17th September, 1998, the appellant approached the Deputy Commissioner of Income Tax vide his letter dated 28the September, 1998 and sought further extension of 45 days for filing block period return. He has, accordingly, filed his return on 2nd November, 1998, declaring total income of Rs.1,01,33,700/-. The same was accordingly assessed vide assessment order dated 30th June 2002.

48. It is not in dispute that notice dated 6th July, 1998 did not cause any prejudice to the appellant. During the course of hearing, we specifically asked Mr.Sathe as to what prejudice was suffered by the appellant on account of alleged defective notice dated 6th July, 1998. He made a positive statement no specific prejudice was suffered by the appellant. At any rate, the notice dated 6th July, 1998 suffered from only technical defects, if any, and, in our opinion, it was protected under the umbrella of section 292-B of the Act.

49. Having said so, now it is necessary to consider one more potent legal submission of Mr.Sathe that provisions of sections 148 and 158-BC are synonymous and *pari materia*. Having examined the

provisions of sections 148(1) and 158-BC, side by side, it would be clear that section 148(1) opens with words "Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him....." This very opening sentence, unequivocally, goes to suggest that in order to assume jurisdiction for assessment under section 147, notice under section 148(1) is a condition precedent; whereas scheme of Chapter XIV-B of the Act suggests that section 158-BA is a section which provides that notwithstanding anything contained in any other provisions of this Act, where after 30th day of June, 1995 a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of any person, then, the assessing officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter. Reading of this provision suggests that this section 158-BA is the provision which provides for jurisdiction in favour of the assessing officer to assess undisclosed income in accordance with Chapter XIV-B. Whereas section 158-BA(2) is a charging section; section 158-BB provides for computation of undisclosed income for the block

period; whereas section 158-BC provides procedure for block assessment. Section 158-BA bestows jurisdiction on the assessing officer and not section 158-BC as submitted by Mr.Sathe. Thus, notice under section 158-BC(a) cannot be equated with that of notice under section 148. That notice under section 158-BC(a) only provides for procedure to be adopted for block assessment. It does not confer jurisdiction to assess in favour of the assessing officer. In these circumstances, submission made by Mr.Sathe is devoid of any substance.

50. The judgment of the Calcutta High Court in the case of **Shaw Wallance & Co. Ltd. v. C.I.T.**, (1999) 238 ITR 13 relied upon by Mr.Sathe is not at all applicable to the facts of the present case. In that case, the Calcutta High Court was dealing with the power of the assessing officer to make regular assessment in respect of a financial year which formed the subject matter of the block period of assessment. While considering this question, observations were made by the Calcutta High Court to say that section 158-BC substituted procedure under section 148. The observations made in the judgment are required to be read in the context in which they are made. It is not permissible to read them in

isolation or out of context. A stray sentence cannot be allowed to be put into service to draw meaning which was never meant by the author himself. Thus, these observations by itself do not mean that rigour of section 148 stands substituted with that of section 158-BC. Section 148 is a substantive section whereas section 158-BC is a procedural section. Both sections definitely stand on different footings. As already observed, procedural requirement can always be waived by the subject for which benefit they are enacted as such submission made by Mr.Sathe in this behalf does not hold water.

51. So far as the last submission made by Mr.Sathe in respect of disallowance of deduction of Rs.36,77,196/- is concerned, disallowance is based on the findings of fact based on the material evidence available on record which was appreciated by the authorities below. The additions were confirmed by the Commissioner of Income-tax (Appeals) as well as by the Tribunal. The concurrent findings of fact are recorded by both the authorities below. The appellant on facts could not establish the said expenditure as business expenditure. Since this question revolves around the appreciation of evidence, the view taken is a reasonable and possible

view which can be supported on the basis of material available on record; it can hardly be said to be a substantial question of law warranting re-adjudication by this Court.

52. In the above totality of the facts and circumstances of the case, appeal is dismissed with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA J.)**